BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

FILED
6-10-16
04:59 PM

In the matter of Joint Application of Charter Communications, Inc.; Charter Fiberlink CA-CCO, LLC (U6878C); Time Warner Cable Inc.; Time Warner Cable Information Services (California), LLC (U6874C); Advance/Newhouse Partnership; Bright House Networks, LLC; and Bright House Networks Information Services (California), LLC (U6955C) Pursuant to California Public Utilities Code Section 854 for Expedited Approval of the Transfer of Control of both Time Warner Cable Information Services (California), LLC (U6874C) and Bright House Networks Information Services (California), LLC (U6955C) to Charter Communications, Inc., and for Expedited Approval of a pro forma transfer of control of Charter Fiberlink CA-CCO, LLC (U6878C).	Application 15-07-009 (Filed July 2, 2015)

RESPONSE BY CHARTER COMMUNICATIONS, INC., CHARTER FIBERLINK CA-CCO, LLC (U6878C), TIME WARNER CABLE INFORMATION SERVICES (CALIFORNIA), LLC (U6874C), AND BRIGHT HOUSE NETWORKS INFORMATION SERVICES (CALIFORNIA), LLC (U6955C) TO (1) APPLICATION OF ENTERTAINMENT STUDIOS NETWORKS AND NATIONAL ASSOCIATION OF AFRICAN-AMERICAN OWNED MEDIA FOR REHEARING OF DECISION AND (2) JOINT APPLICATION OF CENTER FOR ACCESSIBLE TECHNOLOGY AND OFFICE OF RATEPAYER ADVOCATES FOR REHEARING

John L. Clark
Michael B. Day
Goodin, MacBride, Squeri, & Day, LLP
505 Sansome Street, Suite 900
San Francisco, California 94111
Tel: 415-765-8443 jclark@goodinmacbride.com

Attorneys for Charter Communications, Inc., Charter Fiberlink CA-CCO, LLC, Time Warner Cable Information Services (California), LLC, and Bright House Networks Information Services (California), LLC

June 10, 2016

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

In the matter of Joint Application of Charter Communications, Inc.; Charter Fiberlink CA-CCO, LLC (U6878C); Time Warner Cable Inc.; Time Warner Cable Information Services (California), LLC (U6874C); Advance/Newhouse Partnership; Bright House Networks, LLC; and Bright House Networks Information Services (California), LLC (U6955C) Pursuant to California Public Utilities Code Section 854 for Expedited Approval of the Transfer of Control of both Time Warner Cable Information Services (California), LLC (U6874C) and Bright House Networks Information Services (California), LLC (U6955C) to Charter Communications, Inc., and for Expedited Approval of a pro forma transfer of control of Charter Fiberlink CA-CCO, LLC (U6878C).	Application 15-07-009 (Filed July 2, 2015)

RESPONSE BY CHARTER COMMUNICATIONS, INC., CHARTER FIBERLINK CA-CCO, LLC (U6878C), TIME WARNER CABLE INFORMATION SERVICES (CALIFORNIA), LLC (U6874C), AND BRIGHT HOUSE NETWORKS INFORMATION SERVICES (CALIFORNIA), LLC (U6955C) TO (1) APPLICATION OF ENTERTAINMENT STUDIOS NETWORKS AND NATIONAL ASSOCIATION OF AFRICAN-AMERICAN OWNED MEDIA FOR REHEARING OF DECISION AND (2) JOINT APPLICATION OF CENTER FOR ACCESSIBLE TECHNOLOGY AND OFFICE OF RATEPAYER ADVOCATES FOR REHEARING

Pursuant to Rule 16.1(d) of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), Charter Communications, Inc., on behalf of itself and its subsidiaries Charter Fiberlink CA-CCO, LLC, Time Warner Cable Information Services (California), LLC ("TWCIS"), and Bright House Networks Information Services (California), LLC ("Bright House California"), (collectively, "Charter")[1] respectfully request that both the

[1] Time Warner Cable Inc., Advance/Newhouse Partnership, and Bright House Networks LLC, each named in the caption for this proceeding, previously participated as the parent companies of

application for rehearing filed by Entertainment Studios Networks and National Association of African-American Owned Media (together, "ESI") and the joint application for rehearing filed by the Center for Accessible Technology and the Office of Ratepayer Advocates (together, "CforAT/ORA") be denied.

RELEVANT BACKGROUND

Charter, along with Advance/New House Partnership and other Joint Applicants that are now subsidiaries of Charter (collectively "Joint Applicants"), filed a Joint Application with the Commission on July 2, 2015 seeking authorization for an indirect transfer of control of TWCIS and Bright House California to Charter, accompanied by a *pro forma* reorganization of Charter (the "Transaction"). Over the next ten months, the Joint Applicants and numerous other parties engaged in extensive discovery and briefing regarding the proposed transfers of control.

In connection with the briefing before the Commission, several parties raised concerns and claims of purported harms arising out of the Transaction. In their briefing, the Joint Applicants generally explained why the concerns raised by various intervenors were unwarranted and remediation unnecessary, while also in many instances offering voluntary commitments to address those concerns, "in the interest of cooperation,"[2] to the extent the Commission were to share them.[3] As discussed below, the Commission's May 12, 2016 final decision, D.16-05-007 ("Decision"), either adopted or adopted with modification many of the voluntary commitments

---

TWCIS and Bright House California, respectively. As the transfers of control that were the subject of the July 2, 2015 Joint Application in this docket were consummated on May 18, 2016, Time Warner Cable Inc., Bright House Networks LLC, TWCIS, and Bright House California are now all part of Charter, reorganized into "New Charter" as set forth in the Joint Application.

[2] Joint Applicants' Reply Br. 93 (Mar. 11, 2016).

[3] *See id.* at 92-131.

that Charter offered, imposed several additional conditions *not* offered by Charter, and declined to order several others.

ESI did not participate in the Commission's proceeding in any meaningful capacity. It did not protest the Joint Application, did not file testimony or reply testimony, and did not submit briefing or reply briefing. Indeed, its first appearance in this docket was not until May 2, 2016, the final day for filing opening comments on the April 12, 2016 Proposed Decision, and just ten days before the meeting scheduled for the Commission's consideration of the Joint Application. ESI's submission was focused primarily around its request that the Commission impose restrictions on Charter's cable video programming, including a mandatory set-aside of 50 channels for ESI's own programs.[4] ESI also suggested that "all members of the public" should be able to bring actions to enforce conditions set forth in several Memoranda of Understanding ("MOUs") that the Joint Applicants had reached with other parties in this docket, and which the Proposed Decision (and Final Decision) adopted as conditions of approval.[5] A virtually-identical request was already before the Commission from CforAT, which had participated in these proceedings from an early stage.[6] As this issue was already before the Commission, the Joint Applicants' May 9, 2016, reply comments specifically addressed the reasons why the Commission should *not* create third-party enforcement rights to Charter's MOUs with other parties in this docket.[7]

The Commission granted approval of the Joint Application, with conditions, at its May 12, 2016 meeting. During the meeting, the Commission expressly noted that each Commissioner

[4] *See* ESI's Opening Comments 4-5 (May 2, 2016).
[5] *Id*. at 5-7.
[6] *See* CforAT's Opening Comments 8-9 (May 2, 2016).
[7] *See* Joint Applicants' Reply Comments 15 (May 9, 2016).

had reviewed ESI's late-arriving comments.[8] The Commission and Staff also thoroughly discussed whether third parties should be able to enforce the MOUs that had been incorporated into the Proposed Decision, and weighed the arguments for and against incorporating such an approach into the final Decision.[9] After further discussion, the Commission unanimously approved the final Decision without creating such third-party enforcement rights or third-party rights to access confidential data reports exchanged pursuant to the MOUs.

In its final Decision made effective on May 12, 2016, the Commission thoroughly addressed the relevant facts, legal standards, and arguments made by interested parties. The final Decision expressly referenced ESI's reply comments but declined to impose any cable programming restrictions.[10] The Decision also adopted several of Charter's voluntary proposals and "reformulate[d]" others.[11] For example, the voluntary commitments that the Commission either adopted or reformulated with its own modifications include, *inter alia*: (1) allowing existing Time Warner Cable and Bright House Networks customers to retain existing broadband services packages;[12] (2) allowing customers to access Charter's services using their consumer premises equipment (CPE);[13] (3) maintaining a settlement-free IP interconnection policy for three years;[14] (4) meeting certain service quality standards;[15] (5) offering LifeLine discounts;[16] and (6) expanding minimum broadband speeds to 60 Mbps throughout Charter's California

[8] *See* Video Recording at 1:04:35-1:04:50, Commission Meeting of May 12, 2016, http://www.adminmonitor.com/ca/cpuc/voting_meeting/20160512/ ("May 12 Meeting Video").
[9] *See id.* at 1:06:10-1:21:42.
[10] *See* Decision 68 (May 12, 2016).
[11] *Id.* at 62.
[12] *See* Joint Applicants' Reply Br. 97-99; Decision 71-72
[13] *See* Joint Applicants' Reply Br. 115-16; Decision 72.
[14] *See* Joint Applicants' Reply Br. 114; Decision 72.
[15] *See* Joint Applicants' Reply Br. 116-20; Decision 72.
[16] *See* Joint Applicants' Reply Br. 122-23; Decision 72.

service territory within 30 months.[17] However, the Decision did not adopt every condition that Charter had offered in its reply briefing; for instance, Charter had also offered—albeit under protest that such conditions were unnecessary to address any harm arising out of the Transaction—to conduct a customer satisfaction survey with ORA, to provide certain outage reports, and to make several policy changes related to accessibility for disabled customers,[18] which offers the Commission declined to order as conditions of approval.

The Decision was effective on May 12, 2016. In reliance on the conditions set forth in the Decision, the Joint Applicants closed the Transaction—and completed the transfers of control of TWCIS and Bright House California to Charter (along with the reorganization of Charter into "New Charter")—on May 18, 2016.

On May 25, 2016—a full week after the Transaction had already closed—ESI filed an application for rehearing. On May 26, 2016, CforAT/ORA filed a joint application for rehearing as well. As set forth in greater detail below, neither application satisfies the Commission's strict standards for obtaining rehearing, and both should be denied.

STANDARD OF REVIEW

The Commission's rehearing process is limited to the identification and correction of errors of law, and is not intended as another bite at the apple for dissatisfied litigants to repeat arguments previously considered and rejected. "[A]n application for rehearing must set forth specifically the ground or grounds on which the applicant considers the decision or order to be

[17] *See* Joint Applicants' Reply Br. 97; Decision 71.
[18] *See* Joint Applicants' Reply Br. 120-21, 125.

unlawful."[19] "An application for rehearing is not a vehicle for relitigation; rather, the purpose of an application for rehearing is to alert the Commission to legal error."[20]

I. THE COMMISSION SHOULD DENY ESI'S APPLICATION FOR REHEARING.

ESI makes two arguments in favor of rehearing: (1) that the Commission's final Decision supposedly violated ESI's "due process" rights because it failed expressly to address ESI's opening comments; and (2) that the Commission should allow third parties to enforce the MOUs that were incorporated into the final Decision. ESI has failed to identify any legal error by the Commission, and neither of these arguments merits rehearing.

A. The Commission Did Not Violate ESI's Due Process Rights.

ESI claims that its due process rights were violated because the "Commission and the Administrative Law Judge did not review [ESI's] opening comments or consider them when ratifying the Proposed Decision."[21] This argument fails for several reasons.

First, ESI's position lacks evidentiary support and is contradicted by the Commission's own discussion at its May 12, 2016 meeting. There is no evidence that the ALJ or Commission did not consider ESI's comments. To the contrary, during the meeting, it was expressly noted that *all* Commissioners had reviewed ESI's comments, even though they had been filed so close to the meeting date.[22] Further, as ESI concedes, the ALJ's revised Proposed Decision

[19] *Labarada v. S. Cal. Edison Co.*, Case 12-07-022, Order Denying Rehearing of Decision D.12-11-028, D.13-07-047 at 3 (July 25, 2013) (internal quotation marks omitted).
[20] *Id.*; *accord* Rule 16.1.
[21] ESI Appl. 6-7 (May 25, 2016).
[22] *See* May 12 Meeting Video at 1:04:35-1:04:50.

"acknowledged receipt of all reply comments, *including those of [ESI]*."[23] The Commission's final Decision likewise acknowledged ESI's reply comments.[24]

ESI's argument boils down to the claim that the Decision explicitly references in its text the *reply* comments filed by ESI, but not its *opening* comments. However, the Due Process Clause is not offended by the Commission's decision to cite ESI's reply comments instead of its opening comments,[25] particularly where—as shown above—the Commission otherwise acknowledged having received and considered ESI's comments.

Second, ESI was a late-arriving party that chose not to participate in the proceedings, who submitted no testimony, who did not participate in briefing, and whose motion for party status was filed just ten days before the meeting scheduled for consideration of the Joint Application. ESI's decision not to participate in these proceedings is especially noteworthy because ESI had previously been involved in the FCC proceedings and had been aware of the Transaction since June 2015.[26] Given the minimal nature of ESI's involvement in this docket and its last-second intervention, it is hardly surprising that the Decision's discussion focused on parties who had participated more fully in the proceedings during the preceding ten months, and did not expressly discuss and reject each of ESI's arguments in detail.[27]

Third, in any event, ESI's comments were irrelevant and duplicative. ESI complained primarily about the video programming market, which is outside of the Commission's

---

[23] ESI Appl. 4 (emphasis added).
[24] Decision 68.
[25] *See Reytblatt v. U.S. Nuclear Regulatory Comm'n*, 105 F.3d 715, 722 (D.C. Cir. 1997) ("An agency need not address every comment" that is filed).
[26] *See Entertainment Studios CEO Byron Allen Speaks Out About Racial Discrimination*, PR Newswire (June 22, 2015), http://www.prnewswire.com/news-releases/entertainment-studios-ceo-byron-allen-speaks-out-about-racial-discrimination-300103027.html.
[27] *See* May 12 Meeting Video at 1:04:35-1:05:12 (noting that ESI's comments were considered although the Commission would prefer that parties join earlier in the proceedings).

jurisdiction and well outside the scope of this proceeding as set forth in the Assigned Commissioner's Scoping Ruling.[28] The Commission properly realized that there was no need to address issues over which the Commission has no authority in the first place.[29] And ESI's remaining comment—which concerned third-party enforcement of the MOUs incorporated into the Decision—added nothing beyond what was *already* addressed in other parties' submissions. CforAT had already presented substantially the same proposal to the Commission in its own Opening Comments, and the Joint Applicants had also addressed this exact topic in their Reply Comments, specifically directing the Commission to ESI's Opening Comments, to which the Joint Applicants were responding.[30] And as discussed further below, the Commission thoroughly discussed the precise topic of third-party-enforcement rights during the May 12 meeting and declined to adopt such a proposal.[31]

Accordingly, ESI is merely seeking to relitigate an issue that the Commission already considered and decided, and has not identified any legal error. That is not a proper basis for rehearing.[32]

B. The Commission Expressly Considered And Rejected The Proposal For Third Parties To Have Enforcement Rights.

ESI next argues that the Commission erred by not allowing third parties to enforce the MOUs and to have unfettered access to confidential reports created pursuant to the MOUs.[33] Again, neither of these arguments identifies a legal error that would warrant rehearing.

---

[28] *See* 47 U.S.C. § 544; Joint Applicants' Reply Br. 9-11.
[29] Even in its Application for Rehearing, ESI still improperly insists that the Commission should set requirements regarding "network carriage and programming agreements." ESI Appl. 9.
[30] *See* CforAT's Opening Comments 8-9; Joint Applicants' Reply Comments 15.
[31] *See* May 12 Meeting Video at 1:06:10-1:21:42.
[32] *See* Order Denying Rehearing of Decision D.12-11-028, D.13-07-047 at 3; Rule 16.1.
[33] ESI Appl. 8-9.

First, as ESI concedes, during the May 12, 2016 meeting, the Commission and Staff extensively discussed the possibility of extending to *non*parties to the MOUs the right to bring enforcement actions under those MOUs.[34] The Commission decided against incorporating such a unique condition into the approval of this Transaction because, *inter alia*, under this Commission's rules and procedures, third parties *already* have the ability to ask the Staff and Commission to investigate alleged violations of Commission decisions.[35] Commissioner Randolph also expressed concern that the parties that entered into MOUs had not contemplated the creation of third-party beneficiaries or rights to access information and reports created pursuant to those MOUs, and that such a condition would be unfair to the parties who had negotiated those agreements without contemplating an enforcement role for other organizations[36]—a concern highlighted by ESI's presence in this proceeding, as third parties such as ESI may have commercial agendas that differ from the priorities of the organizations, groups, and local governments that had negotiated the agreements in the first instance. Accordingly, the Commission properly concluded it would be inappropriate to create such unique third-party enforcement rights and rights to access confidential information under the MOUs in this proceeding above and beyond what is normally allowed under the Commission's rules and procedures.[37] That reasoned conclusion was well within the Commission's discretion. Rehearing is not appropriate to relitigate an issue that was already decided and that was entirely lawful.[38]

---

[34] May 12 Meeting Video at 1:06:10-1:21:42; ESI Appl. 8.
[35] *See* Rules 4.1, 5.1; May 12 Meeting Video at 1:13:50-1:14:50.
[36] *See* May 12 Meeting Video at 1:10:39-1:11:20.
[37] *See id.* at 1:21:42.
[38] *See Order Denying Rehearing of Decision D.12-11-028*, D.13-07-047 at 3.

Second, ESI is incorrect to suggest that the Commission did not have sufficient time to "fully deliberate the issue" of third-party rights.[39] As noted, in its comments filed May 2, 2016, CforAT had raised the same arguments for expanding third-party enforcement under the MOUs,[40] and Joint Applicants' May 9, 2016, reply comments presented arguments not to adopt such a proposal, responding specifically to CforAT's and ESI's proposal.[41] ESI acknowledges that the Commission expressly considered CforAT's comments.[42] Thus, the Commission had ample time to consider this issue and correctly declined to expand MOU enforcement rights.

Further militating against any rehearing is the fact that the transfers of control have already taken place. After months of discovery, briefing, and negotiations, the Commission issued its final Decision, which made clear that it was effective May 12, 2016. The Joint Applicants reasonably relied on that effective date—as well as the conditions therein—and completed the Transaction on May 18, 2016. By contrast, ESI never participated in the proceedings, filed an eleventh-hour motion asking the Commission to take actions outside of its jurisdiction, and then, despite being dissatisfied with the terms of the Commission's approval, took no action to seek a stay or suspension of the Decision's effective date to prevent the Transaction from closing subject to the conditions in the May 12, 2016 Decision. Granting ESI's application for rehearing now, after the Transaction has already been consummated, would be prejudicial to Charter. As this Commission noted in a prior attempt to rescind a telecommunications merger decision that had already been consummated: "*If such a device were*

[39] ESI Appl. 8.
[40] *See* CforAT's Opening Comments 8.
[41] *See* Joint Applicants' Reply Comments 15.
[42] *See* ESI Appl. 4.

allowed, one obtaining a [decision] from [the] commission could never safely act under it without fear of later attack."[43]

For these reasons, the Commission should deny ESI's application for rehearing.

II. THE COMMISSION SHOULD DENY CforAT/ORA's JOINT APPLICATION FOR REHEARING.

CforAT/ORA's joint application for rehearing should likewise be denied. They claim the Commission committed "legal error" by (1) "inadvertent[ly]" failing to impose additional commitments that Charter "offered"; and (2) not imposing the same time limit as the FCC with respect to the Decision's prohibition against policies involving data caps and usage-based billing in connection with Charter's broadband Internet access services.[44] CforAT/ORA, although they seek to formulate their arguments as claims of legal error, are doing no more than improperly seeking to revisit issues that the parties already briefed and the Commission already considered and decided.

A. The Commission Carefully Considered Which of Charter's Voluntary Commitments to Adopt as Mandatory Conditions.

CforAT/ORA suggest that it was "legal error" and inconsistent for the Commission to mention the voluntary commitments that Charter had offered in one part of the final Decision, but then not change all such offers into mandatory conditions in the Ordering Paragraphs.[45] CforAT/ORA's argument is erroneous because the Commission's decision to adopt some of Charter's offered commitments, to modify or reformulate others, and to decline to adopt others as mandatory conditions was a conscious decision well-supported in the record—not an inadvertent oversight or legal error.

---

[43] *Opinion re Application of Alexander F. Eagle to Rescind Decision 82-05-007*, A.83-05-06, Opinion, 25 CPUC 2d 77 (July 29, 1987) (emphasis in original) (quotation marks omitted).
[44] CforAT/ORA Jt. Appl. 2 (May 26, 2016).
[45] CforAT/ORA Jt. Appl. 4-8.

First, the Commission expressly stated that it would "reformulate" Charter's voluntary commitments—making clear that the Commission never intended to adopt each and every of Charter's proposals verbatim and *en masse*, but had instead decided to impose those requirements that it considered necessary to address purported concerns arising out of the Transaction.[46] The deliberate nature of the Commission's decision is confirmed by the fact that the Commission imposed several conditions *in excess* of what Charter had voluntarily offered, such as in the areas of LifeLine discounts, customer education regarding battery back-up power, and customer CPE.[47] Many of the new conditions that the Decision imposes on Charter—and which CforAT/ORA fail to consider in their application for rehearing—will result in unexpected costs and burdens, which the parties did not anticipate when they agreed to the MOUs or offered the proposals set forth in the reply briefing. Had Charter known the Commission would impose these *additional* conditions, which Charter neither supported nor believed were necessary to mitigate an anticipated Transaction-related harm, it would not have *also* offered many of the "voluntary" commitments that CforAT/ORA cite.

Second, despite offering numerous voluntary measures to address concerns raised by intervenors during the approval process, the Joint Applicants explicitly contended that many of those conditions—including the handful of voluntary commitments that CforAT/ORA complain were not incorporated into the final Decision as mandatory conditions—were "not necessary" to address alleged harms.[48] The logic of the Commission's Decision is consistent with the Joint Applicants' position that the Transaction would not actually create the harms to which the

[46] Decision 62.
[47] *Id.* at 72-73
[48] *See* Joint Applicants' Reply Br. 92, 93.

offered conditions related.[49] Regarding ORA's request that Charter conduct a customer survey in concert with ORA, Joint Applicants explained that Charter already conducted its own thorough surveys and that modifications were not necessary.[50] Nonetheless, in the spirit of cooperation, Joint Applicants indicated they would be "willing to accept ORA's Customer Satisfaction Survey proposal, subject only to three minor modifications."[51] The final Decision, however, did *not* include any finding that the Transaction would degrade service quality to the Joint Applicants' retail customers, rendering this offer unnecessary. Similarly, the final Decision does *not* contain any findings or conclusions that the Transaction will adversely affect service reliability. And to the extent service quality and reliability factored into the Decision, it *already* addresses them through other means, such as its requirement that Charter and its affiliates satisfy various requirements under GO-133[52]—thus rendering sensible the Commission's decision not to *also* adopt as mandatory conditions the other outage and service quality reporting obligations sought by the CforAT/ORA application.[53]

Joint Applicants similarly argued that CforAT's requests that New Charter be required to make numerous policy and training changes related to the accessibility of its bills and website to customers with disabilities (above and beyond those required of other industry participants) were out-of-place in a merger proceeding, given the absence of any nexus between the Transaction and service accessibility, and that such requests should instead be directed at industry-wide

[49] *See id.* at 36-44 (explaining why Transaction would not cause harms in service quality or reliability); Joint Applicants' Reply Comments 13-14 (same).
[50] Joint Applicants' Reply Br. 120.
[51] *Id.*
[52] Decision 72.
[53] CforAT/ORA Jt. Appl. 4-5.

rulemaking or standard-setting.[54] Joint Applicants further argued that such conditions were unnecessary, given Charter's strong track record of accommodating the needs of people with disabilities.[55] Charter offered to make certain additional commitments anyway, in the event the Commission were to agree with CforAT as to the appropriateness and necessity of such requirements.[56] However, the Decision contains no findings even suggesting that the Commission believed that the Transaction poses any threat to the accessibility of Charter's services to its customers, and the Commission's determination not to compel the specific measures called out in CforAT/ORA's application as part of the final Decision is wholly supported on the record before it. Nothing in the Decision implies that the Commission's decision not to order these conditions was inadvertent or erroneous, as opposed to mere disagreement with CforAT regarding the appropriateness of the requested conditions in a merger proceeding, or their necessity given Charter's history and operations.[57] To the contrary, CforAT and ORA repeatedly met with advisors to the Commissioners in the days leading up to the final Decision and voiced concerns about these very same issues—thus confirming that they were fully considered by the Commission.[58]

Thus, notwithstanding CforAT/ORA's attempts to *frame* their arguments as identifying legal errors, they are simply trying to use the rehearing process to relitigate the Commission's careful decisions and upset the careful balance it set in formulating the conditions in the Decision. CforAT/ORA had more than ample opportunity to advance their objectives by reaching a

[54] *See* Joint Applicants' Reply Br. 123-25, 130; Joint Applicants' Reply Comments 6.
[55] *See* Joint Applicants' Reply Br. 127-28; Joint Applicants' Reply Comments 6-7.
[56] *See* Joint Applicants' Reply Br. 129-30; Joint Applicants' Reply Comments 7.
[57] *See, e.g.*, Decision 64.
[58] *See* CforAT's Notice of Ex Parte Communication 1-2 (May 6, 2016); ORA's Notice of Ex Parte Communication 2 (May 11, 2016); *see also* Letter from CforAT to President Picker 1-2 (May 11, 2016).

negotiated resolution in this docket, and having already achieved many of their objectives in the Commission's final Decision, should not be allowed to use the rehearing process as a final bite at the apple to revisit the handful of areas in which they did not prevail.

B. The Decision's Imposition of a Three-Year Rather than Seven-Year Prohibition Against Data Caps and Usage-Based Billing Was Not Erroneous.

Finally, CforAT/ORA also claim that the Commission erred by prohibiting Charter from imposing data caps or usage-based billing for three years, and that the Commission should extend this requirement to seven years to match the FCC's requirement and "make sure that California ratepayers are protected at the same level as protections afforded citizens of other States."[59] The Commission should reject this request for two reasons.

First, the reasoning for a three-year prohibition was fully discussed in both opening and reply comments filed in advance of the meeting.[60] The three-year term was also discussed at the Commission's meeting.[61] Accordingly, the Commission's decision to impose a three-year prohibition, rather than one lasting for some other length of time, was the product of reasoned deliberation after full briefing, not an "inadvertent" "legal error," as CforAT/ORA suggest.[62] As discussed above, rehearing is not proper for relitigating issues already considered and decided.[63]

Second, as Joint Applicants made clear in their reply comments, the Commission's decision to forgo the requested seven-year timeframe was also correct on the merits. The FCC did *not* impose these conditions for seven years as CforAT/ORA claim.[64] Rather, the FCC can

[59] CforAT/ORA Appl. 8-9.
[60] *See* Joint Applicants' Opening Comments 7 (May 2, 2016); Joint Applicants' Reply Comments 3-4.
[61] *See* May 12 Meeting Video at 54:30-56:00.
[62] CforAT/ORA Appl. 2, 9.
[63] *See Order Denying Rehearing of Decision D.12-11-028*, D.13-07-047 at 3.
[64] *See* Joint Applicants' Reply Comments 3.

sunset the requirements after *five* years.[65] Further, California customers will automatically benefit from the FCC's requirements because they apply nationwide. Thus, imposing a California-specific 7-year term, as CforAT/ORA request, would raise significant jurisdictional and preemption problems and would actually risk putting California *out* of sync with the FCC and the rest of the country.

C. The Joint Applicants Justifiably Relied on the Decision in Closing the Transaction, Making Further Post-Closing Modifications Inappropriate.

Finally, as discussed above, strongly militating against any rehearing is the fact that the Transaction already closed on May 18, 2016, in accordance with the final Decision's effective date of May 12, 2016. The Joint Applicants justifiably relied on the conditions as set forth in the Decision in carrying out the transfers of control of TWCIS and Bright House California. Charter also publicly announced on May 12, 2016, that it intended to close the merger on May 18, 2016.[66] Yet CforAT/ORA took no steps to ask the Commission to stay or delay the effective date of its Decision to prevent the Transaction from closing until CforAT/ORA had relitigated the points set forth in their rehearing application, and the Joint Applicants were not required to wait for CforAT/ORA to file such a motion (on the last possible date) before proceeding to closing. Changing the conditions of approval *after the transfers and corporate reorganization have already taken place* would not only be inappropriate, but would be arbitrary and capricious, rendering any decision granting the CforAT/ORA requests highly vulnerable to judicial invalidation. With all due respect to the Commission's authority, that authority does not extend

---

[65] *See In re Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership*, MB Docket 15-149, FCC 16-59, Memorandum Opinion and Order 232 (rel. May 10, 2016), http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0510/FCC-16-59A1.pdf.

[66] *See* Press Release, *Charter, Time Warner Cable and Bright House Networks Receive Final Regulatory Approval for Transactions* (May 12, 2016), http://ir.charter.com/phoenix.zhtml?c=112298&p=irol-newsArticle&ID=2168154.

to retroactively withholding or attaching new and different conditions to approval of an event that has already taken place with the Commission's approval. Parties must be able to "safely act under [a final Commission Decision] without fear of later attack."[67] This is especially true where, as here, the arguments in favor of rehearing were already fully briefed by the parties and fully considered by the Commission.

* * * *

For the reasons explained above, Charter respectfully submits that the circumstances warrant denial of ESI's application and CforAT/ORA's joint application.

Respectfully submitted June 10, 2016 at San Francisco, California.

John L. Clark
Michael B. Day
Goodin, MacBride, Squeri, & Day, LLP
505 Sansome Street, Suite 900
San Francisco, California 94111
Tel: 415-765-8443
Email: jclark@goodinmacbride.com

By */s/ John L. Clark*
John L. Clark

Attorneys for Charter Communications, Inc., Charter Fiberlink CA-CCO, LLC, Time Warner Cable Information Services (California), LLC, and Bright House Networks Information Services (California), LLC

[67] *Opinion re Application of Alexander F. Eagle to Rescind Decision 82-05-007*, 25 CPUC 2d 77 (July 29, 1987) (quotation marks omitted).